

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ SEP 3 - 2014 ★

BROOKLYN OFFICE

MEMORANDUM & ORDER

12-CV-4192 (ENV) (JO)

Defendants.

VITALIANO, D.J.,

Plaintiff GM Produce Sales LLC commenced this action on August 22, 2012 seeking damages against defendants Sam Jin World Trading Inc. (“Sam Jin”), Jin, Jo Lee, and Kyung Min Lee under the Perishable Agricultural Commodities Act (“PACA”) seeking to recover the cost of mangoes it delivered to Sam Jin for which it was never paid. On December 24, 2011, the Court issued an order granting plaintiff’s motion for default judgment against Sam Jin and Jin Jo Lee. By Memorandum and Order, dated November 15, 2013, the Court granted plaintiff summary judgment against the sole remaining defendant, Kyung Min Lee, and referred the matter to Magistrate Judge Orenstein for an inquest on damages.

On August 11, 2014, Judge Orenstein issued his Report and Recommendation (“R&R”) recommending that the Court enter judgment jointly and severally against all defendants in the amount of \$22,442.92, which includes \$19,970.30 in damages, \$1,823.50 in prejudgment interest, and \$649.12 in costs. Although plaintiff sought

attorney's fees, the R&R concludes that PACA does not allow for them in this case.

In reviewing an R&R of a magistrate judge, a district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). A district judge is required to “make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made” by any party. Fed. R. Civ. P. 72(b). But, where no timely objection has been made, the “district court need only satisfy itself that there is no clear error on the face of the record” to accept the R&R. *Urena v. New York*, 160 F. Supp. 2d 606, 609–10 (S.D.N.Y. 2001).

The R&R in this case ordered plaintiff to serve all parties with a copy of the R&R by August 14, and required that any objections be received within 14 days of that date – August 28, 2014. Plaintiff filed proof of service on August 11, and neither plaintiff nor defendants have objected to Judge Orenstein’s R&R, much less within the time prescribed by 28 U.S.C. § 636(b)(1). In accord with the applicable standard of review, the Court finds Judge Orenstein’s R&R to be correct, well-reasoned, and free of any clear error. The Court, therefore, adopts it in its entirety as the opinion of the Court.

Conclusion

For the reasons set forth above, plaintiff is awarded judgment in the amount of \$22,442.92 against all three defendants jointly and severally.

The Clerk of Court is directed to enter judgment accordingly and to close this case.

SO ORDERED.

**Dated: Brooklyn, New York
September 2, 2014**


s/Eric N. Vitaliano

ERIC N. VITALIANO
United States District Judge